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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,273	03/16/2004	Jaime E. Garcia	JK01488A	2972
28368 7590 12/08/2008 THE BLACK & DECKER CORPORATION 701 EAST JOPPA ROAD, TW199 TOWSON, MD 21286				
EXAMINER LANDRUM, EDWARD F				
ART UNIT		PAPER NUMBER		
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12/08/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/801,273

Applicant(s)

GARCIA ET AL.

Examiner

Edward F. Landrum

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 34 and 35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 34 and 35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/16/2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the lowermost portion being below the motor closest to the support and above the arbor must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-7, 34, and 35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Based on Figure 6 and the claim language related to the gear housing it is not understood how the portion of the gear housing that is directly below the motor shaft (644P) is the closest part of the gear housing relative to the support surface when it clearly is shown in Figure 6 that there are parts of the gear housing below the arbor that are closer to the support surface at all times than the portion of the gear housing directly below the motor shaft.

Furthermore it is not understood how the portion of the gear housing directly below the motor shaft can always be the closest part of the gear housing to the support surface. This is because the cutting assembly is pivotally mounted to the base. As cutting assembly pivots the gear housing will rotate. Rotation of the gear housing will cause a different portion of the housing to be closer to the support surface. Applicant appears to be using claim language that makes the device appear non-pivotable and two dimensional.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 4, 6, 7, are rejected under 35 U.S.C. 103(a) as being unpatentable over Ito et al (U.S Patent No. 5,357,834), hereinafter Ito, in view of Hurn et al (U. S Patent No. 5,850,698), hereinafter Hurn.

Regarding claim 1, Ito teaches (see Figures 1-3) a miter saw (1) comprising a base (2) having a substantially horizontal turn-table/support surface (3), a work piece positioning fence (6) attached to the base (2), a cutting assembly (21) pivotally attached to the miter saw. A motor (41) is drivingly connected to the arbor (33) of the saw blade (36) and configured so as to not contact any portion of the base or fence (6) when the mitring at least 45 degrees from a plane substantially perpendicular to the work piece positioning fence (see Figure 2; Col. 6, lines 1-20). The motor (41) has a motor shaft (42) and a gear assembly (42a and 39) that transfers rotational motion from the motor shaft (42) to the arbor (33). A gear housing (32 and 35) covers the motor shaft, arbor, and gears, has a lowermost portion directly below the motor shaft (42) that is exposed (as seen in Figure 3, looking below (on the other side of) the motor shaft on the opposite side of the cross section) when the device is pivoted upwards (as in Figure 1), and extends in one direction higher than the arbor. The arbor (33) does not extend beyond the motor shaft (42). The gear (39) connected to the arbor (33) is a bevel gear. A blade guard (31) surrounds the blade.

Regarding claim 4, Ito teaches (see Figure 3) the gear housing/box (32 and 35) tapers in a direction of the base.

Regarding claim 7, Ito teaches (see Figure 1) the miter saw is a slide-type miter saw.

Ito teaches all of the elements of the current invention as stated above except the use of a gear assembly and a motor orientated substantially perpendicular to the arbor of the saw.

Hurn teaches (see Figure 2) a motor (15) oriented substantially perpendicular to an arbor (21) in a circular saw while still not allowing the arbor to extend beyond the motor shaft. A gear assembly is used to transfer the rotational power of the motor to the saw blade (28). Hurn also teaches (Figures 2 and 3) a portion of a gear housing being behind the arbor (21) and also being an exterior surface adjacent the flat surface of the shoe (300).

It would have been obvious to have modified Ito to incorporate the teachings of Hurn to use an established method of transferring the rotational motion generated by the motor to the saw blade while still allowing the saw blade to bevel to the degree that was originally presented by Ito.

5. Claims 2, 3, 34, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified device of Ito, as stated in section 2, in view of Avakian (U.S Patent No. 3,611,859) or Allemann (U.S Patent No. 2,925,104).

The modified device of Ito teaches all of the elements of the current invention as stated above except for the gear assembly containing a helical and bevel gears as well as a jackshaft. The jack shaft being rotatably connected to the second bevel gear and a helical gear set disposed between the jack shaft and the motor shaft.

Avakian teaches (Col. 2, lines 20-27) a first helical gear that is mounted to a rotating shaft. The first helical gear rotates a second helical gear that is attached to a jack shaft. The jack shaft is attached to a bevel gear which drives a gear box.

Allemann teaches (see Figure 1) a first helical gear (22), which is mounted to a motor shaft (20) that drives a second helical gear (24). The second helical gear drives a jack shaft (26) that in turn rotates a second bevel gear (52) attached to the jack shaft (26). The second bevel gear (52) meshes with a first bevel gear (54) that is mounted to an arbor (50) to rotate a saw (46).

It would have been obvious to have modified the modified device of Ito to incorporate the teachings of Avakian or Allemann to incorporate a helical/bevel gear assembly with a jack shaft between each assembly for the purpose of transferring rotational motion generated by the motor, which is offset from the rotational axis of the saw, to the arbor and still allow the location of the motor to not interfere with the ability of the saw to bevel. This would allow a user to move the motor, which could burn or shock a user if touched, away from any location that a user would normally touch on the saw.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the modified device of Ito, as stated in section 2, in view of Hollinger et al (U.S Patent No. 6,615,701), hereinafter Hollinger.

The modified device of Ito teaches all of the elements of the current invention as stated above except for a trunnion being disposed between the cutting assembly and the turntable so as to permit the cutting assembly to bevel with respect to the base.

Hollinger teaches (Col. 4, lines 50-51; also see Figure 4) a trunnion (32) mounted between the base and the cutting assembly.

It would have been obvious to have modified the modified device of Ito to incorporate the teachings of Hollinger to use a trunnion for the purpose of allowing the cutting assembly to easily be moved to different angular orientations with respect to the base so a user could use the saw to make a variety of different cuts.

Response to Arguments

7. Applicant's arguments with respect to claims 1-7, 34 and 35 have been considered but are moot in view of the new ground(s) of rejection.

The portion below the motor shaft will never be the lowermost portion of the gear housing, and it will never be closest to the support surface. How does at least a part of the arbor fit in the gear housing if the lowermost portion of the gear housing is not below the arbor?

Furthermore both Hurn and Ito teach exposed gear housing portions that are near the support surface.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Stumpf et al (U.S Patent No. 5,943,931), Brunson et al (U.S Publication No. 2001/0042429), Brunson (U.S Patent No. 6,474,206), Sasaki et al (U.S Patent No. 5,564,323), Bergler (U.S Patent No. 4,537,105), Itzov (U.S Patent No. 5,865,079), and

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Mckeage (U.S Patent No. 1,803,068) all teach miter saws including various elements of the disclosed invention.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to lb whose telephone number is 571-272-5567. The examiner can normally be reached on Monday-Friday 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/E. F. L./
Examiner, Art Unit 3724
12/2/2008

/Boyer D. Ashley/
Supervisory Patent Examiner, Art Unit 3724